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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3798 OF 2006

Vijay Sawant Petitioner
versus
S.T.Wagh and others Respondents

Mr.N.V.Walawalkar i/by R.P.Phadke for petitioner.
Ms.Kanchan R. Chimbulkar for respondent no.1.

CORAM : A.P.DESHPANDE, J.

DATE : 12TH JULY 2007

PC :

1. The respondent no.1 filed a dispute under section 91 of the Maharashtra Co-operative Societies Act. In the said dispute the present petitioner moved an application under section 9A of the Code of Civil Procedure with a request to frame a preliminary issue as to whether the dispute filed by respondent no.1 is maintainable before the Co-operative Court. The application moved by the petitioner under section 9A came to be dismissed. The petitioner thereafter filed a review application seeking review of the order rejecting Section 9A application. The review application as well came to be dismissed.

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Aggrieved by the order rejecting the review application, an appeal came to be filed before the Co-operative Appellate Court. The Co-operative Appellate Court was called upon to examine the correctness of the order rejecting the review application. In the submission of the learned counsel for the petitioner, the Co-operative Appellate Court has travelled beyond the scope of the appeal and has recorded a finding that the respondent no.1 is a member of the co-operative society. A limited prayer is made that the observations made by the Co-operative Appellate Court in regard to the membership of respondent no.1 ought not to weigh with the Trial Court while deciding the issue of membership. It is pointed out that the Co-opertative Court has already framed an issue in regard to the membership of the respondent no.1 and the same is yet to be adjudicated by the Co-operative Court.

2. Per contra, the learned counsel for respondent no.1 has pointed out that the issue of membership is already decided earlier when the Assistant Registrar issued directions under section 79(2) of the Maharashtra Co-operative Societies Act to the society, directing granting

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of membership to respondent no.1. It is further brought to my notice that the issue was taken in appeal by the society vide Appeal No.441 of 1990 and the Maharashtra State Co-operative Appellate Court dismissed the appeal filed by the society by its judgment dated 16th March 1994. The Co-operative Appellate Court has confirmed the order passed by the Assistant Registrar conferring the membership on the respondent no.1. It is in this background submitted by the learned counsel for respondent no.1 that the Co-operative Appellate Court has not independently decided the question of membership by the impugned order but has only made certain observations on the basis of the order passed in Appeal No.441 of 1990. The learned counsel for the petitioner only seeks a clarification that the observations made by the Co-operative Appellate Court in the impugned order touching the membership of respondent no.1 should not weight with the Trial Court while deciding the issue, whereas, the learned counsel for the respondent submits that the Co-operative Court shall have to decide the application of membership after taking into consideration the order passed by the Assistant Registrar under section 79(2) and order passed by the Co-operative Appellate Court in appeal No.441 of

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1990. The submission of the learned counsel for respondent no.1 is well merited.

3. It is, thus, clarified that the Co-operative Court shall decide the issue of membership uninfluenced by the observations made by the Co-operative Appellate Court in the impugned order. However, the Co-operative Court shall take into consideration the order passed by the Assistant Registrar under section 79(2) and the order passed in Appeal No.441 of 1990 by the Co-operative Appellate Court while deciding the issue of membership. With this clarification the writ petition is disposed of.

(A.P.DESHPANDE, J.)